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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Advanced Television Systems)	MM Docket No. 87-268
and Their Impact upon the Existing)	
Television Broadcast Service)	

OPPOSITION TO PETITION FOR RECONSIDERATION

America 51, L.P. ("America 51"), permittee of KPPX (TV),¹ NTSC
Channel 51, Tolleson, Arizona, by its attorneys hereby opposes the Petition for
Reconsideration ("Petition") filed in this proceeding on April 20, 1998 by Oro Valley
52, L.L.C. ("Oro") in connection with the Commission's *Memorandum Opinion and
Order on Reconsideration of the Sixth Report and Order ("MO&O")*.²

¹ Call sign KPPX(TV) was recently changed from call sign KAJW(TV). See Mass Media Bureau Call Sign Actions, Public Notice, Rept. No. 327 (rel. Mar. 20, 1998).

² *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, FCC 98-24 (rel. Feb. 23, 1998). Petitions for Reconsideration of the *MO&O* were listed in Public Notice Report No. 2273 released by the Commission on May 4, 1998. Report No. 2273 was published in the Federal Register on May 11, 1998. See 63 Fed. Reg. 25,862 (1998). Accordingly, this opposition is timely filed under 47 C.F.R. §§ 1.429(f), 1.4(b)(1).

Noted/Charles Ford
LAW OFFICE

I. Introduction

America 51 has been assigned NTSC Channel 51 and digital television ("DTV") Channel 52. America 51 requests that the Commission refrain from making any changes to KPPX's DTV allotment in this proceeding.³ Specifically, America 51, which expects to commence NTSC service later this year, is opposed to Oro's suggestion that the Commission substitute DTV Channel 50 for DTV Channel 52 in Tolleson, Arizona. Such an alteration to the current DTV Table of Allotments ("DTV Table") would be contrary to the public interest, requiring a costly redesign and reconfiguration of KPPX's technical facilities. As an alternative, the Commission should permit Oro to amend its pending application for a new station in Oro Valley to request another available NTSC channel.

³ America 51 has previously stated in this proceeding that it is opposed to any change to its current DTV Channel 52 allocation. *See, e.g.,* America 51 Opposition to "Motion to Strike and Response to Reply to Opposition to Supplement to Petition for Reconsideration," MM Docket No. 87-268, at 3 (filed Nov. 17, 1997); America 51 Surreply to Reply to Opposition to Supplement to Petition for Reconsideration, MM Docket No. 87-268, at 2, 5-6 (filed Oct. 14, 1997); America 51 Reply to Opposition to Supplement to Petition for Reconsideration, MM Docket No. 87-268, at 1, 4-5 (filed Oct. 6, 1997). In fact, in the *MO&O*, the Commission declined to change the DTV Channel 52 allocation in Tolleson to accommodate a co-channel low power television station. *See MO&O* at ¶¶ 312, 341-42, 346 (addressing Univision Communications, Inc.'s proposal to change the Tolleson DTV Channel 52 allotment, and denying such proposals based on (1) LPTV's secondary status and (2) the possibility that LPTV might switch its operations to another available channel, or obtain approval from the full power licensee to request such a change).

In its Petition, Oro indicates that the *MO&O* does not protect Oro's pending NTSC Channel 52 application for a new commercial broadcast television station on NTSC Channel 52 in Oro Valley, Arizona because the proposed NTSC Channel 52 facility is short-spaced to the co-channel allotment of DTV Channel 52 in Tolleson.⁴ Oro maintains that the Commission should revise the DTV Table in order to reflect the NTSC Channel 52 allotment at Oro Valley.⁵ Specifically, Oro suggests that the Commission should either (1) change the current DTV Channel 52 allotment to DTV Channel 50, or (2) allow Oro to amend its pending application to specify an alternate available channel.⁶ As explained below, while America 51 opposes Oro's suggestion of replacing the current Tolleson DTV Channel 52 allotment with DTV Channel 50, America 51 does not object to Oro's amending its pending NTSC application to request an alternate NTSC channel for its proposed new commercial broadcast television station in Oro Valley.⁷

⁴ See Petition at 2.

⁵ See *id.* at 3.

⁶ See *id.*

⁷ In its Petition, Oro specifically asks that the Commission alter the DTV allotment for station "KVDR(TV) [sic], Tolleson" from Channel 52 to Channel 50. See Petition at 3. However, as KPPX is the only commercial broadcast television station currently authorized in Tolleson, Arizona, and because DTV Channel 52 is allocated to KPPX, America 51 submits this opposition to Oro's Petition.

II. Substituting DTV Channel 50 for DTV Channel 52 in Tolleson Would Require a Costly and Unnecessary Reconfiguration of America 51's Technical Facilities, and Result in Inefficient Utilization of Scarce Tower Space

America 51 has already set in motion the process of building and operating temporarily on DTV Channel 52 in Tolleson.⁸ An antenna for NTSC Channel 51 has been designed and fabricated to accommodate the specific physical and technical characteristics of the DTV Channel 52 antenna which will be stacked on the NTSC Channel 51 antenna. An antenna for DTV Channel 50 would be heavier than an antenna for DTV Channel 52 and thus would exceed the design characteristics of the NTSC Channel 51 antenna. As a result, stacking a DTV Channel 50 antenna on the NTSC Channel 51 antenna is infeasible from a technical perspective.

⁸ As the Telecommunications Act of 1996 indicates, and as the Commission has explained, NTSC licensees and permittees who are granted a DTV authorization will be required to surrender either the original license for the NTSC channel or the license for the new DTV channel following the transition period which the Commission has stated will end in 2006. *See* 47 U.S.C.A. § 336(b) (West Supp. 1998); *Fifth Report and Order*, 12 FCC Rcd 12809, 12851, ¶ 100 (1997). Furthermore, following the transition period, broadcasters will be allowed where feasible to switch DTV service back to their current NTSC channel as long as their NTSC channel is in the core spectrum. *See Sixth Report and Order*, 12 FCC Rcd 14588, 14628, ¶ 84 (1997) ("*Sixth Report and Order*"). The *MO&O* confirms that Channel 51 will be in the DTV core spectrum, *see MO&O* at ¶ 4, and America 51 has planned its conversion to DTV service with the understanding that after the transition period, America 51 will have the option of utilizing Channel 51 and surrendering the DTV Channel 52 license to the Commission.

In addition, the tower that will support the NTSC Channel 51 antenna with the stacked DTV Channel 52 antenna has been specifically designed and fabricated in order to comply with the requirements set forth in the relevant tower permit granted by the City of Phoenix. In granting a permit to build a new tower to support America 51's antennas, the City of Phoenix, concerned about the proliferation of mountain-top antenna structures, required that the tower be able to support at least two other users. America 51 expended considerable time, effort, and funds in designing and fabricating a tower to comply fully with the City's requirements. The stacked arrangement of the NTSC Channel 51 antenna and the DTV Channel 52 antenna allows America 51 to comply with the City's permit in a manner which best conserves scarce tower space. Because America 51 would be unable to utilize such a stacking arrangement with a DTV Channel 50 antenna, substituting DTV Channel 50 for DTV Channel 52 in Tolleson would require America 51 to expend additional resources and unnecessarily utilize one of the other positions on the tower.

Given the advanced stage of America 51's efforts to implement DTV service and the City's requirement for efficient utilization of antenna structures, the Commission should reject any change to the DTV Table of allotments in Tolleson.

III. Oro Should Seek to Amend its Pending Application for a New Television Station to Request an Alternate Available NTSC Channel

Instead of unnecessarily changing the final DTV Table allocation for Tolleson, an alternate solution, as Oro itself suggests, would be to allow Oro to amend its pending Oro Valley application to request an alternate available channel.⁹ Such an alternative would be appropriate for the following reasons. First, as Oro indicates in its Petition, the Commission stated in the *Sixth Report and Order* in this proceeding that the Commission would continue to process applications for new NTSC stations that were filed on or before September 20, 1996.¹⁰ Additionally, the Commission expressly stated that it would "maintain and protect" vacant allotments that are the subject of pending applications, and that such action would ensure that parties who have invested in new stations might continue pursuing their station projects.¹¹ By allowing Oro to amend its pending application to request an available NTSC, the Commission would satisfy its objective of maintaining and protecting NTSC applications that were filed by September 20, 1996.

⁹ See Petition at 3.

¹⁰ See *Sixth Report and Order*, 12 FCC Rcd at 14635, ¶ 104; Petition at 2.

¹¹ See *Sixth Report and Order*, 12 FCC Rcd at 14639, ¶ 112. Furthermore, as Oro notes, the Commission repeatedly indicated in the *MO&O* that the Commission intended to afford protection to applications for new stations filed by September 20, 1996. See, e.g., *MO&O* at ¶¶ 571, 575, 608, 627; see also Petition at 2.

Second, allowing Oro to amend its pending application would be consistent with Commission policy in implementing the transition to DTV. For example, in connection with the reallocations of television Channels 60-69, the Commission indicated that it would allow applicants to file amendments to request alternate channels that would satisfy the minimum spacing guidelines.¹² Thus, allowing Oro to amend its Oro Valley application to specify an alternate NTSC channel would be consistent with Commission policy in implementing DTV.

Accordingly, America 51 urges that the Commission, instead of changing the DTV allotment in Tolleson, should allow Oro to amend its pending application to request an alternate available NTSC channel in Oro Valley.

IV. Conclusion

For the foregoing reasons, America 51 respectfully requests that the Commission refrain from making any change to the final DTV allotment in Tolleson. Any such change to KPPX's DTV Channel 52 allotment would be contrary to the public interest, resulting in costly changes in America 51's technical facilities, and frustrating the policies of the City of Phoenix on antenna structures. Instead, the Commission should allow Oro to amend its pending application for a new station in Oro Valley to request an alternate available NTSC channel. Accordingly, America


¹² See *Reallocation of Television Channels 60-69, the 746-806 MHz Band, Report and Order*, 12 FCC Rcd 22953, 22971-72, ¶ 40 (1998).

51 requests that the Commission deny Oro's Petition insofar as it suggests substituting DTV Channel 50 for DTV Channel 52 in Tolleson.

Respectfully submitted,

AMERICA 51, L.P.

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May 26, 1998

Declaration

Hector G. Salvatierra, under penalty of perjury, hereby declares that

- 1) He is the general partner of Hector Garcia Salvatierra Limited Partnership which is the general partner of America 51, L.P., permittee of KPPX(TV), Tolleson, Arizona;
- 2) He has read the foregoing Opposition to Petition for Reconsideration, date May 26, 1998 ("Opposition"); and
- 3) The facts stated in the Opposition are true and correct to the best of his knowledge, information and belief.

Hector G. Salvatierra

Hector G. Salvatierra

Dated: May 26, 1998

CERTIFICATE OF SERVICE

I, Ava Smith, hereby certify that on this 26th day of May, 1998, I caused a copy of the foregoing "Opposition to Petition for Reconsideration" to be served by first class U.S. mail, postage prepaid (or hand delivery) on the following:

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